

In the Matter of Anna Maria Proctor, Supervising Management Improvement Specialist (PS0872P), Department of Law and Public Safety
DOP Docket No. 2005-1648
(Merit System Board, decided January 12, 2005)

Anna Maria Proctor appeals the administration of the promotional examination for Supervising Management Improvement Specialist (PS0872P), Department of Law and Public Safety.

By way of background, the subject promotional examination was conducted on August 30, 2004 utilizing Version 2 of the Supervisory Test Battery (STB2). The STB2 utilizes 120 multiple-choice test questions that are presented to candidates on a computer concerning issues, tasks and situations associated with their role as a supervisor in a fictitious organization. Candidates are required to achieve a raw score of at least 67.8 in order to pass the examination with a percentage average score of 70. A total of seven employees filed for the subject examination that resulted in an employment roster of five eligibles with an expiration date of January 5, 2007. It is noted that no permanent appointment has been made from the subject list and the appellant is not a provisional incumbent in the subject title.

On appeal, Ms. Proctor states that she was advised by the Department of Personnel (DOP) to report for the subject examination on August 30, 2004. However, upon her review of the pre-test material, Ms. Proctor states that “I realized that the scenario was familiar.” Ms. Proctor notes that approximately two to three years prior, she assisted the DOP in the evaluation of examinations. Realizing that her continued participation in the examination may be a conflict, Ms. Proctor notified the test monitor that she was familiar with the scenario presented in the stimulus materials and they proceeded to exit the room. After the monitor consulted with other employees of the DOP, a determination was made that she should proceed with the examination. However, by letter dated October 26, 2004, the Division of Selection Services advised Ms. Proctor that she was scheduled to take an alternate form of the Supervisory Test Battery on November 4, 2004.¹ It was explained that upon completion of this alternate test her raw score would be statistically adjusted to match the difficulty level of the STB2. Ms. Proctor was further advised that the score she achieved on this examination would replace the score she achieved in the test she took on August 30, 2004 since she had previously been exposed to the STB2 during its developmental phase. Ms. Proctor argues it is unfair that she is now required to participate in “an examination that had been determined to be more difficult and less relevant to the subject matter” and have her grade “statistically adjusted” for difficulty.

¹ In early November 2004, Ms. Proctor was rescheduled to take the alternate form of the STB on December 9, 2004 in order for her to have time to prepare for the examination. However, she failed to appear for that examination.

The Test Center Supervisor on the night of the August 30, 2004 STB2 administration advises that Ms. Proctor had gone through most of the 50 minute preparation period and brought it to the monitor's attention that she may have been involved in the development of the examination. Ms. Proctor was brought out into the hallway and she explained that she thought she may have been involved in the creation of the examination and that she recognized some, but not all of the material. The Center Supervisor states that she questioned Ms. Proctor about when she worked on the examination and who she worked with at the DOP, but it was unclear as to the extent of her involvement in the development of the test. Under these circumstances, the Center Supervisor states that Ms. Proctor was advised to continue the test, but to see the Center Supervisor before she left the center that night. Before Ms. Proctor left that night, she was advised that it was uncertain as to how the DOP would handle this situation but that someone would be in touch. On the next day, the Center Supervisor was able to verify with the Test Development section of the DOP that Ms. Proctor was utilized as a Subject Matter Expert (SME) in the development of the STB2 and had been exposed to all of the test materials during its development.²

CONCLUSION

It is a basic principle of merit system law to provide appointment and advancement opportunities to Merit System employees based on their knowledge, skill and abilities. To this end, *N.J.A.C.* 4A:4-2.2(a) charges the Commissioner of the Department of Personnel (DOP) to administer examinations for appointment in the competitive division of the career service, which may include performance tests, such as the STB2. Indeed, the development of competitive examinations that evaluate important worker characteristics is the very cornerstone of the merit system since the examinations are designed to fairly evaluate all candidates based on their relative merit and fitness. As such, the security of examination material is paramount in order to ensure that all candidates have an equal opportunity to compete.

The importance of this precept, particularly in the context of battery-based examinations such as the STB and Management Situations Test (MST), where those examinations are often the sole selection instrument used to evaluate multiple supervisory and management level titles, cannot be overemphasized. In this regard, it is noted that due to the reuse of these battery-type examinations and the resultant examination security implications, no review of examination questions or keyed answers is permitted. Due to the number of applicants who apply for supervisory and management examinations each year, it is essential that examination review be limited in certain situations. Further, *N.J.A.C.* 4A:4-6.4(e)

² DOP records indicate that Ms. Proctor signed the "Subject Matter Expert and Staff Agreement Regarding Conflicts of Interest and Confidentiality of Information" on May 7, 2002.

permits the Commissioner of Personnel, on particular examinations, to modify or eliminate the review of examination questions and answers in order to ensure the security of the examination process. As such, the Board has determined that due to the reuse of the STB and MST, no review of examination questions or keyed answers is permitted. See *In the Matter of Supervisory Test Battery Lists* (MSB, decided December 19, 2000) and *In the Matter of Management Situations Test Lists* (MSB, decided October 9, 2002). See also, *James T. Brady v. Department of Personnel*, 149 N.J. 244 (1997).

These examination security concerns are even more compelling when SME's who participated in the development of a particular examination ultimately end up competing in the very same examination for a promotional opportunity. Indeed, permitting an SME to compete in an examination that he or she helped develop is tantamount to providing a candidate the answer key for a test prior to taking the examination. Notwithstanding the fact that Ms. Proctor was inadvertently scheduled to compete in an examination that she helped develop, the fact that it happened and she was advised on the night of the examination to complete the test, is not a basis on which to permit her results on that test to be utilized for promotional opportunities. It is simply not fair to all of the candidates who participated in the examination who did not have the benefit of being exposed to the test development material.

Although it is unfortunate that Ms. Proctor was inconvenienced by being advised to take the examination, the Center Supervisor could not definitively verify that Ms. Proctor was an SME for the examination that was being conducted on the night of August 30, 2004. It was not until the next day that the Center Supervisor could verify when she reported to the DOP that Ms. Proctor had been an SME for the STB2 and was exposed to all of the test material during its development. Under these circumstances, the overriding examination security implications must outweigh the relatively minor inconvenience to Ms. Proctor of being required to take an alternate form of the STB. Clearly, the Division of Selection Services provided the best possible remedy it could under these highly unusual set of facts, and to permit use of the score she achieved would undermine the basic tenets of merit system law.

As noted earlier, Ms. Proctor was afforded two opportunities to participate in the alternate form of the STB as a way of remedy. Further, at her request, the November 4, 2004 test date was rescheduled to December 9, 2004 so that she could prepare for the test. Ms. Proctor failed to appear for this examination. Additionally, the list has been issued and now contains the names of five eligibles that passed the test. Normally, when a competitive situation exists, the Board will not relax the rules or set aside uniform procedures in order to provide a remedy. Nevertheless, given these highly unusual circumstances, Ms. Proctor is to be afforded one more opportunity to participate in the alternate form of the STB.

However, if she participates in the examination and achieves a passing score, she can only be considered for prospective employment opportunities.

ORDER

Therefore, it is ordered that this appeal be denied. However, Ms. Proctor is to be afforded one more opportunity to compete in the alternate form of the subject examination, and, if she passes the examination, her name should be added to the subject employment roster for prospective employment purposes only.

This is the final administrative determination in this matter. Any further review should be pursued in a judicial forum.